IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7277 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANIP NAGARPALIKA

Versus

CHANDRAKANT VAGHELA

Appearance:

MR JK PARMAR for Petitioner

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. Learned Advocate Mr. J.K. Parmar is appearing on behalf of the petitioner and Learned Advocate Mr. A.K. Clerk is appearing on behalf of the respondent.

2. In the present petition, the award passed by the Special Labour Court, Ahmedabad in Reference (LCIDAT) 281 of 1997 to 284 of 1997 dated 17th June, 1999 is challenged wherein the Special Labour Court has granted reinstatement of the respondent workmen with continuity of service and with full backwages from 16th June, 1994 till the date of actual reinstatement and with a cost of Rs.750/- to each workman. The said award has been challenged by the petitioner on the ground that the respondent workmen have not proved the completion of 240 days within a period of 12 month and therefore Section 25F of the ID Act has not been violated by the petitioner and even Sections 25G and 25H of the ID Act is also not proved by the respondent workmen. Mr. Parmar further submitted that the Labour Court has committed gross error in coming to such a conclusion and the said award is contradictory and contrary to the records and therefore, this award is required to be set aside. The learned advocate, Mr. Clerk who is appearing on behalf of the respondent workmen has filed affidavit in reply before this court on 13th October, 1999 and produced on record the order of Special CA 6505 of 1993 dated 5th July, 1993 and deposition of one Shri Madhabhai Babubhai Vaghela and the order passed on the interim relief application in Reference (I.T.) 294 of 1993. The learned advocate Mr. Clerk submitted that this petition is required to be dismissed as not maintainable. According to Mr. Clerk, when these respondent workmen were appointed from 1992-93 and without following any process of law, their services were illegally terminated by the petitioner. He further submitted that recently out of 30 daily rate employes 7 employees were made permanent and for the remaining employees an industrial dispute was raised by the Union and the same is pending before the Industrial Tribunal. According to Mr. Clerk, 19 workmen's services have been terminated including the respondents by the petitioner. If the Labour Court has come to the conclusion while appreciating the evidence on record that there is a clear finding of fact that Section 25F has been violated, then this court normally cannot exercise the powers and jurisdiction under Article 226 and 227 of the Constitution of India. Therefore, according to Mr. Clerk this petition is required to be dismissed.

3. After considering the submissions of both the learned advocates, I carefully perused the award passed by the Special Labour Court, Ahmedabad. Before the Labour Court, the respondent workmen have filed statements of claim and the petitioner has filed written statement denying the claim of the respondent workmen. The list vide Exhibit 19 is produced by the petitioner wherein the names of the respondent workmen have been mentioned and the respondent workmen were examined vide Exhibit 16. Thereafter, the petitioner has examined their witnesses. Thereafter, the Labour Court has given reasons in support of its conclusion in paragraph 12 that the Labour Court has examined the Muster Roll, Pay Register and found that workmen Shri Chandrakant Kanubhai had completed more than 257 days in the year 1993 and in

1994 109 days. In respect of Sureshbhai Babubhai, he had completed 240 days in the year 1993 and 89 days in the year 1994. In respect of Sarojben, in the year 1992 she completed 217 days service, in 1993 225 days and in 1994 97 days. In respect of Kapilaben Kishorbhai in the year 1992 she completed 215 days, in 1993 21 days and in 1994 85 days and in respect of Sarojben Vaghela from 1991 she is working as a permanent employee and has completed more than 220-230 days from the record and thereafter appreciating the said evidence on record and also considering documentary evidence in the said paragraph, the Labour Court has come to the conclusion that each workmen has completed 240 days continuous service within a period of 12 months and this finding of fact is based upon documentary evidence and the oral evidence of both the parties. Therefore, the Labour Court has come to the conclusion that before terminating the services of these workmen, Section 25F has not been followed by the petitioner and in paragraph 18, there is a clear finding of fact and also there is a finding that subsequent to the termination of the respondent workmen, junior employees have been recruited. Not only that, fresh hands have also been recruited and therefore the petitioner has violated Section 25G and 25H and therefore the Labour Court after considering the entire evidence on record came to the conclusion that the termination order is ab initio void as it violates Sections 25F, 25G and 25H of the ID Act, 1947. Therefore, the relief has been

granted in favour of the respondent workmen.

4. In view of the clear finding of the fact given by the Labour Court and also reasons given in support of the conclusion, there is a clear application of mind by the Labour Court while adjudicating the Reference in question. Therefore, according to my opinion after carefully perusing the entire award, the Labour Court has not committed any error either in law or in facts and Mr. Parmar is not able to justify and point out any infirmity in the said award and no other submission has been made by Mr. Parmar. Therefore, when there is a clear finding of fact based on reappreciating of oral documentary evidence then this court cannot reappreciate the very same finding of the evidence while exercising the powers under Article 226 and 227 of the Constitution of India. Not only that, this court cannot act as an appellate authority. According to the view taken by the Apex Court in reported decision 1998 1 GLR Page 17 and 1998 AIR SCW Page 1840, this court cannot act as an appellate authority and simultaneously this court cannot reappreciate the very same finding and come to a different conclusion without justifying the error which is found apparently on the face of the record. Therefore, according to my opinion there is no error committed by the Labour Court and therefore no interference of this court is required under Article 226

and 227 of the Constitution of India. Therefore, the said petition having no merits, is required to be dismissed and the said is hereby dismissed. It is directed to the petitioner to comply with the award in question within a period of one month from the date of receiving a certified copy of the said order.

(H.K. Rathod, J.)

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